IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3512 OF 2004

IN

SUIT NO.3757 OF 1998

...

Mr.Madhukar Venkatesh Ullal ...Plaintiff

v/s.

M/s.Anita Hermy D'souza & ors. ...Defendants

And

M/s.Marvellous Builders Pvt. Ltd. ...Respondents

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Mr.Pankaj Kawli i/b Ms.U.M. Zaveri for the Plaintiff.

Mr.Pimple for the BMC.

Mr.Vora i/b Bharat Joshi for the Defendant No.16 in support of Notice of Motion.

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CORAM: D.K.DESHMUKH, J.

DATED: 2ND DECEMBER,2005

P.C.:

1. This Notice of Motion is taken out by the newly added Defendant No.16 for setting aside the consent terms dated 29-7-2004 filed in Notice of Motion No.120 of 2004.

. The Plaintiff Madhukar has filed the suit for partition of the property. The Plaintiff is claiming 1/2 share in the property. The suit property is described at Exh.B. It is common ground before me that the property to which this Notice of Motion relates is the property which is described at item 2 of Schedule B i.e. survey No.120, Hissa No.12, CTS No.1813, Final plot No.348 near Vile Parle Telephone Exchange, Vile Parle (East), Mumbai. This court on a motion taken out by the Plaintiff being notice of Motion No.2648 of 1998 had granted ad-interim order in favour of the Plaintiff. One of the orders that was granted in favour of the plaintiff was interim

injunction in terms of prayer clause (c). It is common ground before me that by that order the court restrained the Defendant No.14/ Municipal Corporation from handing over possession of the final plot referred to above to the Defendants Nos. 1 to 8. It appears that , thereafter, Notice of Motion No.120 of 2004 was taken out by the Respondent M/s.Marvellous Builders. In that Notice of Motion, consent terms were filed by the Plaintiff, Defendants Nos. 1 to 8 and Defendants Nos. 10 and 11. One of the terms in the consent terms with which this notice of motion concerns is that the interim order granted in terms of prayer clause (c) of Notice of Motion No.2648 of 1998 was vacated. The present notice of motion has been taken out by the Defendant No.16, who claims that before signing the consent terms filed in Notice of Motion No.120 of 2004 the Defendants Nos. 1 to 8 had transferred their interest in the final plot in his favour and that they signed the consent terms without disclosing this and therefore, the order passed in terms of the consent terms in so far it vacates the interim injunction in terms of prayer clause (c) of Notice of Motion No.2648 of 1993 should be vacated.

2. In my opinion, the prayer made in the notice of motion is misconceived. Interim order was passed by this court in terms of prayer clause (c) in Notice of Motion No.2648 of 1998 to protect the interest of the Plaintiff. Therefore, the moment, the plaintiff came before the court by consent terms filed in Notice of Motion No.120 of 2004 giving his consent for vacating that interim order, the court was justified in vacating that interim order. What was the stand of the Defendant on the vacation of the interim order passed in favour of the Plaintiff was irrelevant. Interim order was passed in Notice of Motion No.2648 of 1998 for protecting the interest of the Plaintiff and therefore, the moment, the Plaintiff came before the court and requested the court to vacate the protection extended to him by the court, there was no reason for the court to do otherwise than what the Plaintiff desired. Even if had it been disclosed by Defendants Nos. 1 to 8 at that time to the court that they have transferred their interest in the final plot in favour of Defendant No.16, then also the court would have passed the same order, because the court by vacating the interim order in favour of the Plaintiff would not be passing any order adverse to the interest of the Defendants Nos. 1 to 8.

3. In these circumstances, therefore, there is no justification for setting aside the order passed in terms of the consent terms in Notice of Motion No.120 of 2004, in so far as it vacates the interim injunction granted in terms of prayer clause (c). of Notice of Motion 2648 of 1998 at the instance of Defendant No.16. Notice of Motion disposed of.

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